

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SAFESPAWN PLATFORM SYSTEMS, INC.,  
et al.,

v.

DECISION AND ORDER  
06-CV-726

EZ ACCESS, INC. et al.,

Defendants.

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The instant case involving patent infringement was referred to Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. §636(b)(1). Plaintiffs filed a motion for partial summary judgment pursuant to Federal Rule of Civil Procedure 56. On June 19, 2012, Magistrate Judge Scott issued a Report and Recommendation recommending the following: (1) that this Court grant Plaintiffs' motion to find literal or equivalent infringement of the '240 Patent and '237 Patent by Defendant Bridgeplatforms; (2) that this Court grant Plaintiffs' motion to dismiss Defendants' second affirmative defense as to Defendant Bridgeplatforms; and (3) that this Court grant Plaintiffs' motion to dismiss Defendants' two counterclaims as to Defendant Bridgeplatforms. (Dkt. No. 226). Magistrate Judge Scott recommended denying Plaintiffs' motion for summary judgment to the extent that it sought any other relief. *Id.*

Defendants filed objections to the Report and Recommendation (Dkt. No.

227) and Plaintiffs filed a response (Dkt. No. 229). Defendants filed a reply on August 9, 2012 (Dkt. No. 231) and the Court deemed the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review, and after reviewing the submissions from the parties, the Court hereby adopts Magistrate Judge Scott's recommendation granting summary judgment in favor of Plaintiffs with respect to infringement of the '240 Patent and '237 Patent by Defendant Bridgeplatforms, granting Plaintiffs' motion to dismiss Defendants' second affirmative defense as to Defendant Bridgeplatforms, and granting Plaintiffs' motion to dismiss Defendants' two counterclaims as to Defendant Bridgeplatforms.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, Plaintiff's motion for partial summary judgment is granted in part and denied in part as explained therein.

On March 1, 2013, Plaintiffs filed a motion before this Court for a status conference to set a trial date, a final pretrial conference date and dates for pretrial submissions (Dkt. No. 234). However, based upon the information set forth in Plaintiffs' motion, the parties are still engaged in expert discovery. Thus, Plaintiffs' motion for a status conference to set a date for trial, a final pretrial conference and dates for pretrial submissions is premature and will be dismissed without prejudice. Plaintiffs are instructed to renew their motion when expert discovery is

completed. The case is referred to the Magistrate Judge for further proceedings.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: March 7, 2013